HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 639 of 2007

Between:

The Manager, State Bank of Hyderabad,
Personal Administration Department,
Head Office, Hyderabad 500 177
and another

… Appellants

And

M.V. Rajeswar

… Respondent

:: J U D G M E N T ::

Counsel for the appellants : Shri Ch. Siva Reddy

Counsel for the respondent : Shri Ch. Jagannadha Rao

13th September, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 14.11.2006 passed by the learned Single Judge in Writ Petition No.30137 of 1995 whereby he directed the non-petitioners (the appellants herein) to consider the petitioner's (the respondent herein) case for absorption as temporary Peon/sub-staff in accordance with Circular No.PER/Gr.VI/1392, dated 23.5.1991 issued by the State Bank of Hyderabad (for short, 'the bank').

A perusal of the record shows that the respondent was engaged in the employment of the bank in 1982 as a temporary Peon. He

worked in that capacity for a total period of 268 days with intermittent break. In 1987, he was engaged as a daily wage employee at the Head Office of the bank and worked in that capacity for 89 days. He filed Writ Petition No.30137 of 1995 with the complaint that even though, on the basis of interview held on 9.1.1987, he was selected for absorption as a temporary Peon/sub-staff, the concerned authority did not appoint him and persons placed below him were given posting orders.

The case set up by the appellants was that even though an advertisement was issued in 1991 so as to enable the eligible candidates to apply for appointment as temporary Peon/sub-staff, the respondent did not avail of that opportunity.

During the pendency of the writ petition, the respondent filed WPMP No.20626 of 1996 for issue of a direction to the non-petitioners (the appellants herein) to consider his case in accordance with Circular No.PER/Gr.VI/1392, dated 23.5.1991. By an order dated 22.8.1996, this Court directed the appellants to consider the respondent's case for appointment, but he was not selected.

The learned Single Judge noted that in terms of Circular dated 23.5.1991, the petitioner is entitled to be considered for appointment as a temporary Peon/sub-staff and held that non-consideration of his case has resulted in depriving him of the right to equality. He accordingly directed the bank authorities to consider the petitioner's case for absorption in accordance with Circular dated 23.5.1991.

Shri Ch. Siva Reddy, learned counsel for the appellants invited our attention to notice dated 20.7.1991 issued by the bank for absorption of temporary employees (This notice is shown to have been published in Eenadu and Indian Express dated 30.7.1991 and 1.8.1991) and argued that the learned Single Judge committed a

serious error by directing fresh consideration of the respondent's case. Learned counsel submitted that even though, by having refrained from making application pursuant to notice dated 20.7.1991, the respondent will be deemed to have forfeited his right of consideration, the appellants considered his case in compliance of the Court's order dated 22.8.1996 and, therefore, no further direction was required to be given by the learned Single Judge.

In the context of the submission made by the learned counsel for the appellants, we asked him to show that copy of notice dated 20.7.1991 was produced before the learned Single Judge, but he could not do so. Learned counsel also fairly admitted that no application under Order 41 Rule 27 of the Code of Civil Procedure has been filed by the appellants for permission to file additional documents. Therefore, notice dated 20.7.1991 allegedly published in the newspapers i.e. Eenadu and Indian Express cannot be relied for upsetting the direction given by the learned Single Judge.

In **General Manager, S.B.H. v. V. Ramulu**[1], a Division Bench of this Court considered a question almost identical to the one raised in the petition filed by the respondent. After examining the relevant circulars and instructions, the Division Bench held:

> "When a person has to fulfill the qualification, he should work for 90 days on or after 1-1-1982, can it be said that the service rendered before 1-1-1982 cannot be counted for the purpose of eligibility under the scheme? When the Government of India bestowed considerable attention to solve the problem of temporary employees, it is well aware that the subject matter was also discussed in various settlements, but a decision could not be arrived at. The Approach Paper also says that the benefits under Chapter V-A of the Act should also be given to these temporary employees in subordinate cadre. Therefore, in our view I the words "on or after" cannot be restricted to the meaning as suggested by the learned Counsel for the Bank. The words "on or after" in the context and in the light of object behind the Approach paper and the scheme mean

> the service rendered even before 1-1-1982 by temporary employees can also be taken into consideration. The scheme is one time opportunity to be given to all temporary employees. Therefore, this cannot be lost sight of. As per the scheme one time opportunity means, a person who has completed 90 days of temporary service a on 1-1-1982 and also after
> 1-1-1982 shall be regularised by empanelling him for the post. The words "on or after" appearing in the approach paper of the Government of India, the scheme formulated by the Bank and the letter communicated by the second respondent do not leave any doubt to hold that the scheme is also applicable to all the temporary employees like the petitioner who have completed 90 days even prior to 1-1-1982. If the phrase "on or after 1-1-1982" is not interpreted in the way it is interpreted by us, the same will be rendered constitutionally invalid, because it seeks to introduce a pernicious classification between two groups of temporary employees; those who are appointed prior to 1-1-1982 and those who are appointed after 1-1-1982. Such classification has no nexus with the object sought to be achieved by the scheme."

In view of the above stated legal position, it must be held that the learned Single Judge did not commit any error by directing consideration of the respondent's case for appointment as temporary Peon/sub-staff.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1288 of 2007 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

September 13, 2007

C.V. NAGARJUNA REDDY, J

svs

[1] 1999 (2) An.W.R. 113 (D.B.)